



**Office of the Attorney General
State of Texas**

DAN MORALES
ATTORNEY GENERAL

March 18, 1994

**Honorable Libby Linebarger
Chair
Committee on Public Education
Texas House of Representatives
P.O. Box 2910
Austin, Texas 78768-2910**

Letter Opinion No. 94-028

**Re: Whether a school board member
may vote by proxy at a school board
meeting (RQ-640)**

Dear Representative Linebarger:

You ask whether a school board member may vote by proxy at a school board meeting when a quorum is present at the meeting. You state that a member of the board of trustees of an independent school district lives in a rural area and works a shift schedule that at times interferes with his attendance at school board meetings, and you ask whether he may vote by proxy on the agenda items.

You do not state whether the school board member contemplates having another person vote for him at the meeting or sending his vote to the meeting by written proxy; however, we conclude that he lacks authority to do either. In Attorney General Opinion JM-903 (1988), the office determined that members of the Texas Racing Commission could not delegate their authority to attend, participate in, and vote at commission meetings to substitutes, in the absence of express statutory authority. The comptroller's chief clerk, who was authorized by section 403.003 of the Government Code to "perform the duties of the comptroller when the comptroller is unavoidably absent or is incapable of discharging those duties," could sit as a voting member of the Racing Commission in the comptroller's place under those circumstances, but no statute permitted the other commissioners to be replaced by substitutes at a meeting of the Racing Commission. Attorney General Opinion JM-903.

Section 23.26 of the Education Code provides that the "trustees shall constitute a body corporate . . . [and] shall have the exclusive power to manage and govern the public free schools of the district." We find no statute that authorizes a school trustee to delegate to another person his authority to vote on issues before the school board. Accordingly, he may not authorize another person to vote for him at a school board meeting on issues before the board.

This office has stated that the Open Meetings Act presumes that members of the governing body will be physically present to participate in the meeting. Attorney General Opinion DM-207 (1993). The act does not permit a member of a governing body who is unable to attend a meeting because of scheduling problems to participate in it by live video transmission. Nor does it allow a governmental body to meet by telephone conference call, except for those agencies expressly authorized to hold such meetings. Attorney General Opinion JM-584 (1986); see Gov't Code ch. 551, subch. F.

A common-law rule prevents a member of a governmental body from submitting a written vote without attending the meeting of the body. In *Webster v. Texas & Pac. Motor Transp. Co.*, 166 S.W.2d 75 (Tex. 1942), the Texas Supreme Court stated as follows:

It is a well established rule in this State, as well as in other States, that where the Legislature has committed a matter to a board, bureau, or commission, or other administrative agency, such board, bureau, or commission must act thereon as a body at a stated meeting, or one properly called. . . . *Consent or acquiescence of, or agreement by the individual members acting separately, and not as a body . . . is not sufficient.*

166 S.W.2d at 76-77 (emphasis added). The court held that the three-member railroad commission, acting as a body at a meeting, had the authority to grant or refuse applications for permits to operate as common carriers, and that this power could not be exercised by the commissioners acting individually by circulating the application and voting sheet, or by an informal conversation between two commissioners. *Id.* at 78. The purpose of the rule requiring the board to act as a body at a meeting


is to afford each member of the body an opportunity to be present and to impart to his associates the benefit of his experience, counsel, and judgment, and to bring to bear upon them the weight of his argument on the matter to be decided by the Board, in order that the decision . . . may be the composite judgment of the body as a whole.

Id. at 77. A school board member who does not attend the meeting will not hear the board's discussion about the issue, and his written vote cannot contribute to a decision that must be reached by the board acting as a body. We conclude that a school board member may not vote by proxy at a school board meeting even if a quorum is present at the meeting.

S U M M A R Y

A school board member may not delegate his power to vote at a school board meeting to another person or vote by written proxy at a school board meeting even if a quorum is present at the meeting.

Yours very truly,

A handwritten signature in cursive script that reads "Susan L. Garrison".

Susan L. Garrison
Assistant Attorney General
Opinion Committee